

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 27 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FREDRIC A. GARDNER; et al.,

Plaintiffs - Appellants,

v.

SHARON PETERS; et al.,

Defendants - Appellees.

No. 06-16647

D.C. No. CV-05-02852-NVW

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Argued and Submitted May 15, 2008
San Francisco, California

Before: KLEINFELD and N.R. SMITH, Circuit Judges, and MILLS^{**}, District
Judge.

Fredric Gardner, Elizabeth Gardner, and Beth-el Aram Ministries appeal the
district court's grant of Defendants' motion to dismiss pursuant to Federal Rules of

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Richard Mills, Senior United States District Judge for
the Central District of Illinois, sitting by designation.

Civil Procedure 12(b)(1) and 12(b)(6). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

The Internal Revenue Service (IRS) provided sufficient notice to the Gardners' last known address. *See* 26 U.S.C. § 6330; *Williams v. IRS*, 935 F.2d 1066, 1067 (9th Cir. 1991). The Gardners did not request a hearing within the statutory period, thus they were only entitled to an "equivalent hearing." *See* 26 U.S.C. § 6330(a)(3)(B); 26 C.F.R. § 301.6330-1(i). Therefore, the district court did not err in finding that the Gardners submitted an untimely request for a Collections Due Process (CDP) hearing, and therefore lacked subject matter jurisdiction to review the Decision Letter issued by the IRS. *See* 26 U.S.C. § 6330(d)(2); 26 C.F.R. § 301.6330-1(i)(2), "Q&A-16".

The Gardners were not entitled to injunctive relief because (1) they were not entitled to a CDP hearing, *see* 26 U.S.C. § 6330(e)(1), and (2) they were unable to show the government would not ultimately prevail, *see Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962).

Beth-el Aram Ministries did not state a claim for wrongful levy because the levy was placed on property in which the Gardners had an interest at the time the lien arose. *See Sessler v. United States*, 7 F.3d 1449, 1451 (9th Cir. 1993); 26 C.F.R. § 301.7426-1(b).

AFFIRMED.